IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS M. KEOWN,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	
RICHFOOD HOLDINGS	:	**No. 01-2156**
Defendant.	:	

MEMORANDUM AND ORDER

SCHILLER, J. **June , 2002**

I. INTRODUCTION

Plaintiff Thomas Keown has brought suit against his former employer alleging that he was compelled to resign due to sexual harassment, age discrimination, and in retaliation for complaining about Title VII violations in the workplace. Richfood has moved for summary judgment on all three claims. For reasons I explain below, the sexual harassment claim is dismissed, but the age discrimination and retaliation claims may proceed to a jury.

II. BACKGROUND

Mr. Keown worked in the Norristown office of Defendant Richfood Holdings, where he held the title Vice President in charge of Transportation and oversaw Management Information Systems.

Beginning in October 1998, Plaintiff began to find a number of pamphlets containing sexual content in his work mailbox. One such pamphlet was entitled "Testosterone Levels: the Key to Great Sex for Men Over Fifty," and discussed the possible benefits of the hormone androstenedione for older men's sexual potency. (Rotelle Dep. Ex. 7).

Mr. Keown confronted Ms. Penny Mitchell, Richfood's accounting vice-president at Norristown, who admitted sending a pamphlet. (Keown Dep. at 203-04). She responded, "You're

an older man. You've got gray hair. I thought they would be of interest to you." (Keown Dep. at 288). From October 1998 through approximately January 1999, Plaintiff received approximately eight to eleven sexually suggestive pamphlets. (Keown Dep. at 265). The pamphlets were small booklets of about eight to ten pages each. Some pamphlets were more sexually explicit than others. (Keown Dep. at 217-18). Ms. Mitchell also sat so close to Mr. Keown during meetings that she touched him with her breasts. (Keown Dep. at 370). Ms. Mitchell had also, the year before, made sexually tinged comments while at Richfood's Brook Road facility, including one regarding the size of Mr. Keown's posterior. (Keown Dep. at 191-93).

In a December 1998 telephone conversation, Plaintiff's co-worker Charlotte Edwards remarked, "Tom Keown, you're getting senile on me" and slammed down the telephone. (Keown Dep. at 444, 446). Ms. Edwards, the Corporate Director of Risk Management, was Mr. Keown's direct supervisor on risk management issues and reported directly to the company's chief executive officer. (Keown Dep. at 435-36; Convington Dep. at 75-76). Mr. Keown reported the incident to his boss, Robert Romano. (Keown Dep. at 448; Romano Dep. at 138-40). No disciplinary action was taken against Ms. Edwards. (Richfood's Response to Plaintiff's Request for Admissions at ¶¶ 34-36).

Mr. Keown received another sexually explicit pamphlet in late December 1998 or early January 1999, which discussed erectile dysfunction in older men. Attached to the cover of this pamphlet was a post-it note signed in the name of Mr. Keown's much younger wife, Denise, directing Mr. Keown to a chart and picture on page two. Page two depicted a woman leering over a gray-haired man's shoulder as he was looking at the man's desiccated anatomy. Behind them was a graph about the male anatomy correlating its size with age. Ms. Mitchell admitted sending both

the pamphlet and the note. (Mitchell Dep. at 126-29).

In January 1999, Mr. Keown complained about the pamphlet to Robert Romano, the General Manager of Richfood's Norristown office, and gave him the offending pamphlet and note. (Keown Dep. at 368-69). Mr. Romano, in turn, referred the matter to Michael Rotelle and Alec Covington at Richfood's headquarters in Richmond, Virginia.[1] Mr. Rotelle was Richfood's head of human resources and Mr. Covington was its Chief Operating Officer. Mr. Keown also complained to William Sharkey, Richfood's corporate Vice-President for Transportation who, in turn, also contacted Mr. Rotelle.[2] Following his complaint, Mr. Keown received no further pamphlets. (Keown Dep. at 369).

On February 15, 1999, Mr. Rotelle visited the Norristown facility and interviewed Mr. Romano, Ms. Mitchell, and Mr. Keown. (Rotelle Dep. at 146, 165-70). During Mr. Rotelle's meeting with Mr. Keown, Mr. Keown stated that he had received approximately eight to ten sexually explicit pamphlets and gave the final one and the attached post-it to Mr. Rotelle. (Keown Dep. 196-98; Rotelle Dep. at 174-75). Mr. Rotelle never took any steps to ensure the pamphlets were not

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[1]Witnesses diverge as to what action Richfood took following Plaintiff's complaint. Mr. Romano claims that he approached Ms. Mitchell about the pamphlet and instructed her to cease sending them. (Romano Dep. 97, 144, 156, 178). Mr. Keown then allegedly instructed him to take no further action, and Mr. Rotelle did not learn about the pamphlet until he visited Norristown on February 15, 1999.

According to Mr. Keown – whose version is adopted for summary judgment purposes – Mr. Romano stated that he would need to turn the matter over to Michael Rotelle. (Keown Dep. at 295-97). Ms. Mitchell denies that Mr. Romano ever spoke to her about the pamphlets, corroborating Mr. Keown's version. (Mitchell Dep. at 109-12).

[2]The parties dispute whether Mr. Sharkey ever received the pamphlets. According to Mr. Sharkey, Mr. Keown gave him copies of the pamphlets. (Sharkey Dep. at 11, 30). Mr. Keown himself testified that the pamphlets were destroyed. (Keown Dep. at 208, 218, 258, 279). The court need not resolve the discrepancy at this stage.

received at work. (Rotelle Dep. at 129). Although Mr. Rotelle insists that he verbally reprimanded Ms. Mitchell, she denies being disciplined in any manner. (Rotelle Dep. at 129; Mitchell Dep. at 111, 119, 121, 158, 188-89).

Mr. Rotelle and Mr. Convington visited the Norristown facility on March 24, 1999 and met with Ms. Mitchell. No one discussed Plaintiff's sexual harassment complaints with Ms. Mitchell. (Amendment to Richfood's Response to Plaintiff's Requests for Admissions at ¶ 27). Mr. Covington and Mr. Rotelle then met with Mr. Keown, with Mr. Romano also present. Keown had believed the meeting was to discuss his complaint against Ms. Mitchell. (Keown Dep. at 333-34, 341-42, 386). However, his complaint was only touched on at the meeting. Instead, Mr. Convington denounced Mr. Keown's use of profanity at work and criticized his work and his work ethic, (Keown Dep. at 332-33; Rotelle Dep. at 199, 203; Romano Dep. at 167), and that his "work habits were less than equal to the rest of the management team." (Convington Dep. at 59). Mr. Convington raised his voice at the meeting. (Convington Dep. at 60). Mr. Keown felt the criticism unfair. Mr. Keown had consistently received high performance reviews and won the maximum raises allowed by the company. (Keown Dep. at 52; Sharkey Dep. at 8; Tier Dep. at 106-09). He would arrive at work start work early and work as late as 1 a.m., and often worked weekends. (Tier Dep. at 105-07). He developed a centralized computer system – OMNI – for the Norristown Wholesale outfit. (Keown Dep. at 87-91, 146-54). Despite its successful development and implementation, Mr. Covington complained that Keown was even involved in the OMNI project. (Rotelle Dep. at 200).

Mr. Keown left the March 24, 1999 meeting feeling "crushed." (Keown Dep. at 387). Shortly thereafter, he spoke with Mr. Romano. Mr. Romano informed him that he would not receive a car allowance as previously indicated, that his contract with Richfood would not be renewed, that

he had no future at the company, and recommended Mr. Keown resign. (Keown Dep. at 386-87; 399-404; Keown Dep. Ex. 14 at 4). Mr. Keown tendered his resignation via email on April 1, 1999. (Keown Dep. Ex. 17). During discovery, it was revealed that Richfood had decided as early as March 17, 1999, that it would not renew Plaintiff's employment contract. (Sharkey Dep. at 17).

One week after Mr. Keown's resignation, Mr. Sharkey, who went by the name Bill, spoke with Mr. Romano. Mr. Romano stated, "Bill, you better watch your step, too, you know, I think he [Mr. Convington] is trying to get the older guys out of here." (Sharkey Dep. at 26).

Plaintiff filed a complaint with the EEOC and received his right to sue letter on February 5, 2001. He filed the current action on May 2, 2001, alleging gender discrimination (Count I), age discrimination (Count II), and retaliation for complaints of sexual harassment (Count III). Richfood has moved for summary judgment.

III. DISCUSSION

A. Standard of Review

On a motion for summary judgment, a court must determine whether, on the record presented by the parties, "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party bears the initial burden of proving that there is no dispute as to a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). The burden then shifts to the opposing party to set forth specific facts demonstrating a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

A genuine issue exists only if the there is sufficient evidence to enable a reasonable jury to return a verdict for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248,

252 (1986). In making this determination, the court views evidence in a light most favorable to the non-movant. *See Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995). It is inappropriate for the court to settle factual discrepancies and credibility determinations on summary judgment. *See In re Unisys Savings Plan Litig*., 74 F.3d 420, 433 n.10 (3d Cir. 1996). Therefore, ambiguities and conflicts in a deponent's testimony should be left for the fact-finder to resolve. *See id.* These standards are "applied with added rigor in employment discrimination cases, where intent and credibility are crucial issues." *Stewart v. Rutgers, State Univ.*, 120 F.3d 426, 431 (3d Cir. 1997).

B. Count I – Gender Discrimination Claim

Plaintiff's first claim is for gender discrimination based on a hostile work environment theory. (Pla. Response to Motion for Summary Judgment at 17). He asserts that placing the pamphlets in his mailbox constituted sexual harassment of so severe a degree that he felt compelled to resign to escape it.[3]

To sustain his claim of sexual harassment, Plaintiff must show that: (1) he suffered intentional discrimination because of his sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat

[3]Plaintiff points to other examples of sexual harassment in his response to current Motion, such as: Ms. Mitchell's habit of standing in such proximity to Plaintiff that her breasts or other parts of her anatomy were in contact with Plaintiff, the use of profanity at work, and a comment Ms. Mitchell made in 1997 regarding the size of Keown's posterior. However, Plaintiff specifically disavowed any claim based on contact with Ms. Mitchell's breasts or any misconduct other than receiving the pamphlets. (Keown Dep. at 222-23). Moreover, the comment regarding the size of Plaintiff's posterior, even if construed as part of this case, was an isolated instance which occurred in 1997 at the Defendant's former facility at Brook Road. (Keown Dep. at 189-95). According to Mr. Keown, this was the last such comment. (Keown Dep. at 195). Thus, the Court will examine Plaintiff's sexual harassment claim only with respect to the pamphlets.

superior liability. *See Kunin v. Sears Roebuck & Co.*, 175 F.3d 289, 293 (3d Cir. 1999). The Court will focus on the second, third, and fourth elements.

Finding a work environment to be hostile or abusive requires a review of all relevant circumstances to see if the workplace is "permeated with discriminatory intimidation, ridicule and insult." *Harris v. Forklift Sys.*, 510 U.S. 17, 21-23 (1993). Factors which the court should consider include: (a) the frequency of the harassment, (b) its severity, (c) whether it is physically threatening or humiliating or merely an offensive utterance, (d) whether it unreasonably interferes with employee's work performance, and (e) its effect on an employee's psychological well-being. *See id.* at 23; *Arasteh v. MBNA Am. Bank, N.A.*, 146 F. Supp. 2d 476, 494-95 (D. Del. 2001). What constitutes harassment defies reduction to a simple formula. "Common sense, and an appropriate sensitivity to social context, will enable courts . . . to distinguish between simple teasing or roughhousing . . . and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive." *Id.* (quoting *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 82 (1998)).

Viewing the evidence here in this light, Plaintiff cannot be said to have endured severe or pervasive harassment. Plaintiff's claim is that he received up to eleven small booklets of about eight to ten pages each containing sexually-related material. He has testified that some pamphlets were more sexually explicit than others. (Keown Dep. at 217-18). A number of the pamphlets provided medical information, including the one pamphlet included in the record advocating the hormone androstenedione to compensate for the effects of declining testosterone levels. (Rotelle Dep. Ex. 7). The pamphlet contained no sexually explicit images or text. Another booklet discussed erectile dysfunction in older men.

The pamphlets may have been seedy and in bad taste, but they do not approach the level of severe, pervasive, and regular sexual harassment needed to support a sexual harassment claim. Courts have deemed much more prurient behavior to be insufficient to sustain a claim of sexual harassment. *See e.g. Koelsch v. Beltone Elecs. Corp.*, 46 F.3d 705, 708 (7th Cir. 1995) (two occasions of fondling female employee's leg and buttocks, presence of baby picture of supervisor superimposed with adult genitalia, request to donate pubic hairs as present to boss, after which alleged discriminator kept distance from plaintiff deemed not actionable); *Weiss v. Coca-Cola Bottling Co.*, 990 F.2d 333, 337 (7th Cir. 1993) (finding that a male co-worker's conduct consisting of several incidents of unwanted touching, attempts to kiss, placing "I love you" signs in her work area, and asking a female employee out on dates did not create a hostile work environment); *Arasteh*, 146 F. Supp. 2d at 495 (comments regarding relationship between plaintiff and her husband, insistence that plaintiff socialize more, rubbing of plaintiff's legs and staring at her chest an unspecified number of times too commonplace, vague and infrequent to be considered severe or pervasive); *Gautney v. Amerigas Propane, Inc.*, 107 F. Supp. 634, 643-45 (E.D. Pa. 2000) (no sexual harassment claim by female plaintiff where co-workers visited strip clubs, lowered pants to display tattoo on pelvic bone, commented that women should use their physical attributes to gain business advantage, discussed the size of their sex organs and escapades with other women, and showed plaintiff a written story with sexually explicit content).

The pamphlets which Mr. Keown received may have been offensive, but they did not place Mr. Keown into a sexually threatening or humiliating position. Although Plaintiff claims the pamphlet and post-it note involving erectile dysfunction were particularly offensive to him because he had an implant in that region, there is no reason it should have interfered with his work

performance or had a significant impact on his psychological well-being.

Moreover, the Court the pamphlets were sent too infrequently – eight or nine pamphlets over a period of four month period – to constitute harassment. *Compare Gharzouzi v. Northwestern Human Servs. of Pa.*, Civ. A. No. 01-192 , 2002 WL 987993, 2002 U.S. Dist. LEXIS 8621, at *62-63 (E.D. Pa. May 6, 2002) (finding one or two offensive comments made each month over period of several months to be insufficient evidence of pervasive hostility). After Plaintiff complained to Richfood management about the erectile dysfunction pamphlet and the post-it attached to it, delivery of the pamphlets ceased.

Accordingly, Plaintiff's claim for sexual harassment must be dismissed.

C. Count II – Age Discrimination Claim

Mr. Keown has stated a valid claim for age discrimination and may attempt to prove at trial that Richfood permitted an environment so hostile to him on the basis of age that he felt compelled to resign.

1. Constructive Discharge

An employer may be liable on a constructive discharge theory when an employee is forced to resign his or her jobs because the employer knowingly permitted conditions of discrimination to persist so intolerable the a reasonable person subject to them would resign. *See Cardenas v. Massey*, 269 F.3d 251, 263 (3d Cir. 2001). The resignation is treated as if it were an outright dismissal by the employer, rendering the resignation an "adverse employment action" which can serve as the basis for age discrimination or retaliation claims. *See Duffy v. Paper Magic Group, Inc.*, 265 F.3d 163, 167-68 (3d Cir. 2001) (constructive discharge as basis for age discrimination claim); *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1084-85 (3d Cir. 1996) (constructive discharge as basis for

race and retaliation claims).

Much of the harassment which Mr. Keown endured was age-based. The pamphlets, described more fully above, were directed to sexual performance problems of men over 50. Indeed, the last pamphlet was entitled: "Testosterone Levels: The Key to Great Sex for Men Over 50!" (Rotelle Dep. Ex. 7). Attached to the pamphlet was a note signed in the name of Mr. Keown's much younger wife. When Mr. Keown confronted Ms. Mitchell about the pamphlet, she responded that she placed the pamphlet in his mailbox because he had gray hair and she thought the pamphlets might be of interest to him. (Keown Dep. at 288). Mr. Keown complained to management about the pamphlet and note.

Second, Ms. Charlotte Edwards, the Corporate Director of Risk Management, made another age-based comment. In a December 1998 telephone conversation, she remarked, "Tom Keown, you're getting senile on me" and slammed down the telephone. (Keown Dep. at 444, 446). He reported the incident to his boss, Robert Romano. (Keown Dep. at 448; Romano Dep. at 138-40). No disciplinary action was taken against Ms. Edwards. (Richfood's Response to Plaintiff's Request for Admissions at ¶¶ 34-36).

Third, Plaintiff lost a company car which he had previously been told that he would receive. *See Clowes v. Allegheny Valley Hosp.*, 991 F.2d 1159, 1161 & n.2 (3d Cir. 1993) (suggesting reduction in pay or benefits may be evidence of constructive discharge). While Richfood argues that Plaintiff was not entitled to a company car, corporate representatives had in fact indicated Plaintiff would receive one. The question is one for the jury.

Fourth, on March 24, 1999, Mr. Keown met at the Norristown office with Alec Covington, the Chief Operating Officer of Richfood, in the belief they were to discuss Mr. Mitchell. Instead,

Mr. Covington denounced Mr. Keown's use of profanity at work and criticized his work and his work ethic, (Keown Dep. at 332-33; Rotelle Dep. at 199, 203; Romano Dep. at 167), and that his "work habits were less than equal to the rest of the management team." (Convington Dep. at 59). Mr. Convington raised his voice at the meeting. (Convington Dep. at 60). Mr. Keown felt the criticism unfair and untrue in light of his prior performance and the hours he had kept. Despite the successful development and implementation of the OMNI computer project, Mr. Covington complained that Keown was even involved with it. (Rotelle Dep. at 200). If Mr. Covington's statements were baseless, they may serve as a basis for a claim of constructive discharge. As our Court of Appeals has held in a related context, false accusations may be a relevant factor is deciding whether working conditions were intolerable. *Levendos v. Stern Entertainment, Inc.*, 860 F.2d 1227, 1231 (3d Cir. 1988) (weighing false accusations of theft and drinking on the job among other facts as basis for constructive discharge claim).

Lastly, shortly after Plaintiff's encounter with Mr. Covington, Mr. Romano, the chief Richfood officer at Mr. Keown's site, told Mr. Keown that his contract would not be renewed, that he had no future with the company, and recommended that Mr. Keown resign. (Keown Dep. at 386-87; 399-404; Keown Dep. Ex. 14 at 4).[4]

Taken together, a jury may properly infer that Plaintiff was constructively discharged.

2. Discharge on the Basis of Age

Richfood next asserts that there is no evidence that Plaintiff's employment was terminated on the basis of age. To that end, it labels Ms. Mitchell's pamphlet and Mr. Edwards remarks to be

[4]Tellingly, the record also contains evidence that as March 17, 1999, one week before Mr. Keown's meeting with Mr. Convington, Richfood was planning not to renew Plaintiff's contract as early.

irrelevant "stray remarks" made by non-decisionmakers and unrelated to any employment action. *See e.g. Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 545 (3d Cir. 1992).

However, a remark attributed to Mr. Covington, the Chief Operational Officer of Richfood suggests he was trying to get rid of older workers. (Sharkey Dep. at 25-28). Mr. Covington's comments, if introduced in a properly admissible form, would constitute a comment by a decision maker relating to the decision-making process and would satisfy Plaintiff's burden as to pretext.

Furthermore, Plaintiff's constructive discharge claim is not solely premised on the theory that decision makers were prejudiced. Rather, Plaintiff asserts that Richfood permitted age-based bias to exist to such a degree that conditions were so intolerable that he was compelled to resign. While Mr. Romano was aware of the offensive statements, Plaintiff was nonetheless subjected to the treatment described above. That sufficed to permit a claim of age discrimination.

The Defense next asserts that Plaintiff's replacement was older, barring any age discrimination claim. However, the evidence also shows that a number of Mr. Keown's former functions were taken on by a man seventeen years his junior.

Taken in a light most favorable to the Plaintiff, sufficient evidence exists to sustain an age discrimination claim.

D. Count III – Retaliation for Complaints of Sexual Harassment

Richfood also seeks summary judgment on Plaintiff's claim that he was constructively discharged in retaliation for his complaints of sexual harassment. Richfood's first attack, that plaintiff suffered no adverse employment action, largely rehashes its arguments as to constructive discharge, which the Court has resolved in the preceding section. In its second challenge, Richfood contends that Plaintiff's complaints of sexual harassment occurred too far away from the time of his

discharge to be causally connected.

To prevail on his claim of retaliatory discharge, Plaintiff must show that he: (1) engaged in a protected activity; (2) Richfood took an adverse employment action against him; and (3) a causal connection exists between the protected activity and the adverse employment action. *See Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1299 (3d Cir. 1997). [5] If the protected activity and the alleged retaliatory action are close together in time, a jury may infer a retaliatory motive to satisfy the causal link element. *See Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 503 (3d Cir. 1997). Mere passage of time, however, is not conclusive proof against retaliation. *See Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 279 (3d Cir. 2000); *Aman*, 85 F.3d at 1085-86.

Viewing the evidence in a light most favorable to the Plaintiff, the evidence may establish a link between Plaintiff's complaint of sexual harassment and his constructive discharge. Plaintiff complained to Mr. Rotelle on February 15, 1999 of sexual harassment by Ms. Mitchell. (Rotelle Dep. at 174-76). Mr. Rotelle neglected to conduct a proper investigation, to ask key witnesses about Mr. Keown's sexual harassment allegations, and to inform Mr. Covington as to the Ms. Mitchell's alleged harassment. While Mr. Keown awaited the outcome of the investigation, Richfood made the decision not to renew Plaintiff's contract. (Sharkey Dep. at 14-18). According to all accounts, the March 24 meeting was to pursue Rotelle's interviews of February 15. Plaintiff believed the February 15, 1999 would be used to discuss his complaint of sexual harassment. (Keown Dep. at 386). Nonetheless, Plaintiff received criticisms of his work performance at that meeting. Three days later, he learned his contract would not be renewed and was told he had no future at the company.

[5]The parties agree that Plaintiff engaged in protected activity in seeking relief from sexual harassment at Richfood. Retaliation for complaints of age-based harassment are not part of the Complaint in this action.

A jury may properly believe that the intolerable working conditions which Plaintiff endured were the result of his complaint to Mr. Rotelle of sexual harassment.

IV. CONCLUSION

Summary judgment is entered for Defendant Richfood holdings on Plaintiff's claim of sexual discrimination by harassment. Plaintiff may proceed to trial on the theory that he was discharged due to age discrimination and in retaliation for complaining about sexual harassment. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS M. KEOWN,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
RICHFOOD HOLDINGS	:	**No. 01-2156**
Defendant.	:	

ORDER

AND NOW, this day of **June, 2002**, upon consideration of Defendant Richfood Holding's Motion for Summary Judgment and Plaintiff Thomas M. Keown's response thereto, it is hereby **ORDERED** that:

Defendant's Motion for Summary Judgment (document no.8) is **GRANTED IN PART AND DENIED IN PART** as follows:

(a) Defendant's Motion is **GRANTED** with respect to Plaintiff's gender discrimination (sexual harassment) claim. Judgment is entered in favor of Defendant Richfood Holdings and against the Plaintiff Thomas M. Keown on his claim of gender discrimination (sexual harassment), Count I of the Complaint.

(b) In all other respects, Defendant's Motion is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.